APPEAL NO. 93019

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). A contested case hearing was held on November 3, 1992, in (city), Texas, before hearing officer), with additional testimony and evidence taken thereafter and the record closing on December 9th. The hearing officer found that claimant failed to prove by a preponderance of the evidence that her hand, wrist, and finger pain was causally connected to her employment, and thus the claimant did not have a compensable injury under the 1989 Act. In her request for review, the claimant contends that the evidence presented preponderates in favor of her having suffered a repetitive physical hand injury from years of extensive and repetitious computer keyboard use.

DECISION

Upon review of the record, we affirm the decision and order of the hearing officer.

The claimant testified that she has worked for the employer/carrier since 1979, and in the capacity of a diagnostician since 1986. Her job requires her to go to six schools to do psychological and academic testing of students. She said that over the past five years her duties have required her to use her arms and forearms frequently. Each test on a student requires a 10-page report plus a supplemental report of two to four pages; she said she prepares about five reports a week. These reports are prepared on a laptop computer weighing about 20 pounds. She also is required to input data into a stationary computer, the keyboard height of which causes her to have to hold her hands in an awkward position. An additional function as a contact person at schools also requires her to keep a daily activity log and other documentation which is done on three-copy paper requiring greater than normal pressure. She estimated that each report requires about 1½ to 2 hours of typing, and that she spent approximately five hours writing or typing in conjunction with other tasks.

On (date of injury) as the claimant was typing some reports, she experienced pain inside the palm of her right hand. She took a lunch break, but when she went back to her typing the pain persisted. She did not notice it so much the next two days because she was in meetings as part of in-service training, but the following day when she started to type she could not finish the report. Following some time off work, during which time her hands were swollen, she tried typing with just her left hand, but the pain began occurring in that hand as well. She has continued to work for employer/carrier, although she is on a form of light duty and has received assistance with her tasks.

On April 11, 1992, shortly after the onset of her pain, claimant saw (Dr. C), who diagnosed wrist strain and possible carpal tunnel syndrome. A return to work statement also dated April 11th returned claimant to work on April 13th, with the restriction that she not use her right hand. (The diagnosis on that statement was "Tendinitis Rt. hand.") Dr. C continued to treat claimant and prescribed medication for her pain, although her prescription medication had to be discontinued because of gastrointestinal problems.

An undated summary prepared by Dr. C stated he believed the claimant had bilateral strain of wrists and early arthritis with degeneration of inter-osseous ligaments in both wrists, although there was still the possibility of carpal tunnel syndrome. He concluded, "[i]n my opinion based on the job demands that you informed me especially the repetitive motion of hand and wrist may very possibly cause this condition."

On May 7th the claimant saw (Dr. S) of the Hand Center of San Antonio, who administered tests for carpal tunnel syndrome and stated his impression as probable bilateral carpal tunnel syndrome. He gave her injections, but reported after a May 12th visit that claimant's pain had increased following the injections. Claimant told Dr. S that day that Dr. C had recommended she see a neurologist and have an MRI. Dr. S said he felt that seeing a neurologist was indicated in claimant's case, "where she has upper extremity pain without an obvious diagnosis other than possible carpal tunnel syndrome." He stated, however, that "the degree of pain she has seems out of proportion to the findings especially since she had on initial exam normal two point and normal motor strength." He also disagreed with her having an MRI, and he discharged her from treatment by mutual agreement.

The claimant had an MRI of the wrists on May 15th which, according to Dr. C's summary, showed "a tiny effusion along the volar of the radial carpal joint [and] evidence of degeneration of interosseous ligaments" (left wrist) and a 7mm ganglion and degeneration of interosseous ligaments (right wrist). However, the MRI showed no evidence of carpal tunnel syndrome in either wrist. Claimant also was referred to (Dr. H). In a June 16th summary Dr. H made a possible diagnosis of tenosynovitis of the hands with no clear evidence of nerve root or radiculopathy, probably aggravated or caused by her job.

On September 2nd, claimant was seen by (Dr. G), an associate of Dr. S. Dr. G noted that Dr. H had performed electrodiagnostic studies that showed no electrical evidence of carpal tunnel syndrome bilaterally. He also noted the results of the MRI. X-rays ordered by Dr. G showed no apparent bone or joint abnormality in either wrist. He concluded, "[c]linically, this patient does not appear to have carpal tunnel syndrome, but the cause for her rather persistent wrist/hand pain is not clear to me. She will be re-evaluated with a bone scan and rheumatoid profile."

Claimant was seen by another doctor at the Hand Center, (Dr. P), who on September 14th said claimant had evidence of atypical symptoms of possible carpal tunnel syndrome. He recommended a repeat EMG, as well as a magnified bone scan. On September 25th Dr. P called claimant's EMG studies "significantly abnormal," but noted that repeat EMG studies by a Dr M were completely normal. A bone scan revealed "increased uptake over her capitate bone." Dr. P repeated that her symptoms, which included aching pain in the distal portion of her forearm, are very atypical of carpal tunnel syndrome, and he

recommended a consultation with (Dr. Sa). The same day, Dr. Sa stated he had not seen claimant's MRI, but that her bone scan was "hot" at the base of her third metacarpal between the capitate and the third metacarpal. X-rays taken that day revealed the possibility of some bony protuberance into the carpal canal, although Dr. Sa felt this x-ray should be correlated with the MRI to be sure this was not superimposition of bones in the right carpus.

Dr. Sa stated his impression that claimant most likely had an anomalous palmaris longus profundus or an anomalous tendon, or perhaps even a bony protuberance causing carpal tunnel syndrome that is "unusual in nature." He also stated, "[p]erhaps the reason the electrodiagnostic studies are normal is because of the fact that this is a congenital anomaly that is causing her carpal tunnel syndrome." Dr. Sa said he would in the meantime correlate the MRI and the x-rays.

In an October 16th report Dr. Sa mentioned claimant's normal MRI scan and said, "[a]s hard as I looked for an extra tendon, it is probably not there." He noted claimant's continued and severe pain, and discussed the possibility of surgery, but advised her to remain on light duty work in the interim. The same day claimant was seen by Dr. P, who repeated that she had atypical symptoms, and stated that he believed she had some compression and irritation of the median nerve due to flexor tenosynovitis. He said he believed she was a good candidate for open carpal tunnel release, with the understanding that there was a 25 percent chance her symptoms would not improve.

The record of the hearing was kept open to receive the answers to the deposition on written questions of Dr. S. In answer to the question whether claimant sustained a repetitive trauma injury, Dr. S replied as follows:

> I have only seen the patient on two occasions. By history, her problem began after typing four reports on 4/7/92. Therefore the history of chronic repetitive injury is fairly minimal since the patient stated that it began over a short period of a few days. I cannot give a definite diagnosis in this patient. She seems to have quite a bit of hysterical component to her problem, and I was not able to assert a definite diagnosis upon seeing her on these two occasions.

In answer to the question whether Dr. S based the answer to the foregoing question upon objective tests performed on claimant, Dr. S replied:

> Again, no diagnosis was established, only a presumptive diagnosis of carpal tunnel syndrome.

In answer to the final question of what objective test do you base your answers on and what are the significance of these tests, Dr. S replied:

There are no truly objective findings. We only have the patient's subjective history, and her response to the normal provocative tests for carpal tunnel syndrome, which can be either considered objective or subjective. Certainly, Tinel's, pressure and Phalen's test are more subjective than the other parts of the exam such as strength, sensation, etc.

In response to Dr. S's answer about claimant's symptoms arising after typing only four reports, claimant took the witness stand to clarify that her typing and writing duties had been fairly consistent throughout 1990, 1991, and 1992 until the time her hands began to hurt. She said when relating her problem to Dr. S, however, she had only described what had happened on April 10th. Upon questioning from the hearing officer, she estimated that she spent 20 hours a week typing and 20 hours a week writing, and that she routinely worked overtime.

The hearing officer made findings of fact, in pertinent part, that on or about April 10, 1992, claimant began to have pain in her hands that went into her fingers and wrist; that health care providers have been unable to determine the exact cause of her problems; and that she has not proven by a preponderance of the evidence that there is a causal relationship between her employment duties and her alleged injury. Therefore, the hearing officer concluded, the claimant does not have a compensable injury, and is not entitled to any benefits, under the 1989 Act.

Clearly, the medical evidence and claimant's own testimony indicates that she had documented complaints of a physical problem which has caused her much pain and debilitation. However, the Act defines a compensable injury as one that arises out of and in the course and scope of employment. Article 8308-1.03(10). The claimant has the burden of proving that a compensable injury occurred. Washington v. Aetna Casualty and Surety Company, 521 S.W.2d 313 (Tex. Civ. App.-Fort Worth 1975, no writ). Furthermore, there must be established a causal connection between the conditions under which the claimant's work was performed and the resulting injury. Garcia v. Texas Indemnity Ins. Co., 209 S.W.2d 333 (Tex. 1948).

The evidence before the hearing officer included the following: the claimant testified that writing, typing, and other repetitive motions were a usual and constant part of her job, and had been for several years before she began to experience pain; that her pain occurred and recurred upon performing these duties; that she did not engage in other similar strenuous or repetitive activities outside the workplace; and that her pain abated during the times she was not on the job, such as during school vacations. From the numerous medical opinions included in the record, there appears to be no clear consensus that claimant had carpal tunnel syndrome, and in fact at least two doctors definitively ruled it out. However, two doctors (Drs. C and H) posited that claimant may have other conditions "very possibly" or "probably" caused or aggravated by her work. One doctor, Dr. Sa, indicated the possibility

that claimant's pain was caused by a congenital condition. Another, Dr. S, stated on deposition that the possibility of claimant having a chronic repetitive injury was minimal and that "she seems to have quite a bit of hysterical component to her problem." Obviously, a clear diagnosis of claimant's condition eluded most of the medical experts involved in this case.

The 1989 Act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence offered and of its weight and credibility. Article 8308-6.34(e). The testimony of a claimant may be probative evidence in establishing whether an injury occurred; however, the trier of fact is not required to accept a claimant's testimony but may weigh it along with other evidence. Presley v. Royal Indemnity Insurance Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). Furthermore, it is the hearing officer's exclusive province as fact finder to resolve conflicts and inconsistencies in the testimony of different witnesses. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. Civ. App.-Houston [14th Dist.] 1984, no writ.)

The decision of the hearing officer will be set aside only if the evidence supporting his determination is so weak or against the great weight evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The hearing officer's decision should not be set aside because different inferences and conclusions may be drawn on review, even though the record contains evidence or gives equal support to inconsistent inferences. Texas Workers' Compensation Commission Appeal No. 91021, decided September 25, 1991. In this case, there was probative evidence supporting the hearing officer's determination that a causal relationship between her employment and any alleged injury had not been established.

We accordingly conclude that the hearing officer's decision and order should be affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge